9362

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00/00AY/LSC/2013/0458**
Property	:	**Flat 2, 1b Montrell Road, London SW2 4QD**
Applicant	:	**Ellenwell Properties Ltd**
Representative	:	**Miss Gilbert of Counsel**
Respondent	:	**Ms Joan Riley (formerly known as Tyica Joan Riley)**
Representative	:	**Mr Galway-Cooper of Counsel**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Miss J E Guest (solicitor)** **Mrs A Flynn (chartered surveyor)** **Mr P Clabburn (lay member)**
Dates and venue of Hearing	:	**29/10/2013 and 15/11/2013** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**28/11/2013**

DECISION

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Decisions of the tribunal

(1) The tribunal determines that the sum of £673.64 is payable by the Respondent in respect of the service charges for the year 2009/2010, £599.04 for the service charge year 2010/2011 and £550.95 2011/2012, i.e. a total of £1,823.75.

(2) The tribunal determines that the sum of £60.00 is payable by the Respondent in respect of an administration charge.

(3) The tribunal makes the determinations as set out under the various headings in this decision.

(4) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(5) The tribunal determines that the Respondent shall pay the Applicant £195.00 within 28 days of this decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

(6) The tribunal declined to make an order against the Respondent under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

(7) Since the tribunal has no jurisdiction over county court costs and fees or the Respondent's counterclaim, this matter should now be referred back to the Croydon County Court.

The background

1. The property which is the subject of this application is a one bedroom flat situated on the ground floor of a semi detached house converted into five self-contained dwellings. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute. The tribunal considered photographs of the building that had been included in the hearing bundle.

2. The Respondent holds a long lease of the property granted on 01/10/2008 for a term of 125 years commencing on 29/09/2008. The lease requires the Respondent to contribute 20% towards to the cost of services to be provided by the Applicant, as set out in the 5th Schedule. The specific provisions of the lease will be referred to below, where appropriate.

The application

3. Proceedings were originally issued in the Northampton County Court under claim no. 3YK23073. The Applicant claimed the sum of £5,300.65 in relation to service charges for the years 2009/2010, 2010/2011 and 2011/2012, administration charges of £60.00 and £150.00 and ground rent.

4. The claim was defended and a counterclaim brought by the Respondent in respect of various allegations against the Applicant concerning such issues as failure to undertake works, secure the building, loss of rental income, etc. The claim was transferred to the Croydon County Court on 19/06/2013 and then in turn transferred to this tribunal by order of District Judge Mills on 19/06/2013.

5. Under the terms of the County Court referral, the tribunal was required to determine pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") the amount of service charges and administration charges payable by the Respondent in respect of the service charge years 2009/2010, 2010/2011 and 2011/2012. The relevant legal provisions are set out in the Appendix to this decision.

Procedural issues and the hearing

6. The tribunal would not normally provide a detailed account of procedural matters in a decision of this nature but the tribunal considers that it must in this case, as will become apparent on reading the following.

7. The matter was first considered by the tribunal at the pre-trial review hearing *("the PTR")* on 23/07/2013. The Applicant was represented at this hearing by Miss Gilbert of Counsel. The Respondent did not attend and she was not represented. The directions sent to both parties after the PTR made it clear that the Respondent's counterclaim *fell outside the tribunal's jurisdiction* and would be stayed pending the tribunal's determination when the matter would be remitted back to the County Court. This had to be repeated on many occasions by the tribunal when hearing the application.

8. At the PTR, the tribunal directed that the matter be heard on Tuesday 29 October 2013 with a time estimate of one day. The tribunal also made directions that required the parties to undertake various steps so that the matter was ready for hearing on 29/10/2013. Paragraph 2 required the Applicant to file/serve a statement of case by 13/08/2013, paragraph 3 required the Respondent to file/serve a statement of case by 03/09/2013, paragraph 4 required both parties to provide disclosure

of documents by 17/09/2013 and paragraph 5 required witness statement to be served by 01/10/2013.

9. The Applicant's statement of case was filed/served on 17/09/2013 together with its disclosure. The Respondent did not comply with the directions. The tribunal wrote to Montas solicitors regarding this on 25/09/2013 but received no reply. This letter warned that evidence could only be introduced at the hearing in exceptional circumstances. There was no response. The Applicant's solicitors produced a hearing bundle (one lever arch bundle of documents) that was filed/served on 16/10/2013.

10. At the hearing on 29/10/2013, the Applicant was again represented by Miss Gilbert and the Respondent was represented by Mr Galway-Cooper of Counsel. The Respondent sought to rely upon a lever arch bundle of documents sent to the Tribunal on Friday 25 October 2013 (and received on Monday 28 October 2013) and which the Respondent claimed was delivered to the Applicant's solicitors that day. The Respondent's bundle contained, amongst other things, the Respondent's statement of case (undated) and the following witness statements:

    (1) witness statement Onoride Monioro (accounts manager at Montas Solicitors) dated 21/10/2013;

    (2) first witness statement of the Respondent dated 30/09/2013;

    (3) second witness statement of the Respondent dated 23/10/2013;

    (4) witness statement of Daniel Cook (tenant of Flat 4 owned by the Applicant) dated 23/10/2013;

    (5) witness statement of Robert Campbell (Respondent's lettings agent) dated 18/10/2013;

    (6) witness statement of Stoil Filipov (Respondent's workman) dated 22/10/2013;

    (7) witness statement of Ammed Opeyemi (Respondent's former tenant) dated 22/10/2013; and

    (8) witness statement of Grzegorz Debiec (Respondent's workman) dated 22/10/2013.

11. In her first witness statement dated 30/09/2013, the Respondent explained that she has a young child who is under the care of Great Ormond Street Hospital who has had 4 operations in a period of 10

months and the Respondent was unable to attend the PTR as her child was unwell. Whilst the tribunal was, of course, sympathetic to the Respondent's position, it was noted that she has been represented by solicitors, Montas Solicitors, throughout and the tribunal had received no communication from Montas Solicitors explaining their client's difficulties.

12. The tribunal and the Applicant's Counsel were presented with the Respondent's bundle at the start of the hearing on 29/10/2013. The situation was further compounded by the fact that the Respondent's Counsel said he had only been instructed at 6pm the previous day so needed time to consult with the Respondent who did not attend the hearing listed at 10am until 10.20am.

13. The tribunal was informed that the Respondent had been unable to comply with the directions as she suffered ill health in addition to her son being unwell. The tribunal, albeit reluctantly, gave the Respondent permission to rely on the documents contained in her bundle. This was on condition that she submitted medical evidence confirming her ill health and her child's ill health that supported her claim that she had been unable to comply with the directions due to health problems. The tribunal again noted that failure of the Respondent's solicitors to explain the position and also warned the Respondent in clear terms that the tribunal expected parties to adhere to its directions.

14. In order that the Applicant was not prejudiced by the late service of the Respondent's bundle, the tribunal delayed the start of the hearing to give the Applicant's Counsel an opportunity to consider the documents. Further, the tribunal also determined that the Applicant would not suffer prejudice by the late service of the Respondent's evidence in any event. This was because a substantial part of the Respondent's bundle related to her counterclaim and other issues not within the tribunal's remit. It appeared that, in preparing the bundle, the Respondent and/or her solicitors had failed to realise or accept the tribunal's limited jurisdiction.

15. As a consequence of the above issues, the tribunal was unable to start hearing evidence until 12.50pm on 29/10/2013. Additional documents were provided on behalf of the Applicant on 29/10/2013, namely: (1) the agreement between the Applicant and its managing agents, Salter Rex, dated 09/03/2009; (2) a tenant ledger enquiry dated 29/10/2013; and (3) schedules of expenditure for the years in question. The Respondent also produced one additional document at the hearing, a letter from Chatfield Property Ltd to the Respondent dated 12/12/2008.

16. The Applicant's property manager, Mr Kwame Darkwah of Salter Rex, gave oral evidence and the Respondent also gave oral evidence on 29/10/2013. However, as half a day had been lost as a result of the late

filing/service of the Respondent's bundle, there was insufficient time on 29/10/2013 to conclude hearing the evidence so that the tribunal had to reconvene the hearing on 15/11/2013.

17. The tribunal gave additional directions on 29/10/2013, which required any additional evidence to be relied upon by the Respondent to be limited to the service of the service charge demands and filed/served by 4pm on 05/11/2013 and permitting the Applicant to file/service witness statements in reply by 4pm on 11/11/2013. The parties were warned at the hearing that the tribunal would not allow further evidence that did not comply with the additional directions and this was also stated clearly on the directions order. The tribunal also directed that the Respondent should provide the tribunal with medical evidence not produced at the first hearing since this was the basis upon which she had been given permission to rely upon her evidence filed/served out of time.

18. There followed what can only be described as extraordinary conduct by those representing the Respondent. The Respondent's solicitors attempted to serve a bundle of additional evidence on the Applicant's solicitors by email late at night on 05/11/2013 and in the early hours of the morning on 06/11/2013. The tribunal was at a loss to understand why a firm of solicitors would be working on this type of case at such hours and no explanation was offered. Also, the letterhead of the Applicant's solicitors states that they do not accept service by email, as does the letterhead of the Respondent's own solicitors. The directions order of 29/10/2013 sent to the Respondent's solicitors was also returned to the tribunal marked *"RTS"* (return to sender). This was because the Respondent's solicitors moved three months previously but they were still using their old letter headed paper. There was no response to a telephone message left by the tribunal case officer.

19. The tribunal also heard from Miss Gilbert that the Applicant's solicitors had received an email on 14/11/2013 demanding to attend the offices of Salter Rex to inspect within hours the original agreement that had been produced via fax to the tribunal on 29/10/2013. There had been no request to inspect the original at the hearing on 29/10/2013 and no direction to that effect. The Applicant's solicitors refused the request since it had been made at such short notice but the tribunal heard that the Respondent's Counsel nevertheless attended Salter Rex's office perhaps unaware that his instructing solicitors request had been refused.

20. The Respondent's second bundle was also emailed to the tribunal in the early hours of 06/11/2013 (at 02:36 to be exact). No explanation was given as to why this bundle had not been served/filed in accordance with the tribunal directions of 29/10/2013. Further, this additional evidence went far outside the scope of the directions, which made it

clear that the additional evidence must only relate to the service of demands.

21. The Respondent's second bundle of evidence included medical reports for the tribunal only that set out the health problems suffered by her and her child. The second bundle included a total of five further witness statements and also documents relating to insurance. The additional witness statements were:

    (1) Third witness statement of the Respondent dated 05/11/2013;

    (2) Second witness statement of Mr Monioro dated 04/11/2013;

    (3) Second witness statement of Ammed Opeyemi dated 05/11/2013;

    (4) Second witness statement of Robert Campbell dated 05/11/2013

    (5) Unsigned witness statement of John Ewetuga (Respondent's partner) dated 05/11/2013.

22. The further witness statements appeared to have been prepared largely to address questions put to the Respondent when she gave evidence on 29/10/2013 when she was asked whether she had provided any alternative address for the service of the demands. It accepted by both Counsel for both parties that service by ordinary post at the demised premises was sufficient (see clause 10 of the lease). Mr Galway-Cooper also conceded that the witness statement of Mr Ewetuga was not relevant to the issues before the tribunal. The third witness statement of the Respondent also exhibited the results of a Companies House search dated 29/10/2013 concerning Mr Grahame Ralph (director of the Applicant) but it was accepted by the Respondent's Counsel that there was no issue as to Mr Ralph's capacity given the effect of section 161 of the Companies Act 2006 that states,

    (1) The acts of a person acting as a director are valid notwithstanding that it is afterwards discovered—

    (a)that there was a defect in his appointment;

    (b)that he was disqualified from holding office;

    (c)that he had ceased to hold office;

    (d)that he was not entitled to vote on the matter in question.

(2) *This applies even if the resolution for his appointment is void under section 160 (appointment of directors of public company to be voted on individually).*

20. The tribunal decided to exclude the evidence contained in the Respondent's second bundle. The tribunal made this decision for the following reasons:

(1) the Respondent had already been permitted to serve the first bundle out of time with the result that it had delayed the hearing by half a day;

(2) the Respondent had been warned in clear terms at the hearing on 29/10/2013 that the tribunal was unlikely to allow further breaches of its directions;

(3) no explanation was offered as to why the second bundle had been served late and why the additional evidence had not been adduced when the first bundle was prepared;

(4) the Respondent would not in any event be prejudiced given the agreement between the parties regarding the valid method for the service of demands and effect of s. 161;

(5) the Respondent's witnesses could address any additional matters or clarify their original statements when giving oral evidence; and

(6) the overriding objective under Rules 3 requires the tribunal to deal with cases proportionately and also requires the parties to co-operate with the Tribunal generally, particularly when having regard to the amount of the service charges in dispute.

20. On 15/11/2013, the Respondent and Mr Darkwah gave further oral evidence regarding the service of demands. The Respondent's lettings agent, Mr Campbell, also gave oral evidence. Mr Monioro was not called to give evidence, as Mr Galway-Cooper submitted that his evidence was not relevant save for the reference to Chatfield Property Ltd on the Seller's Information document exhibited to his first witness statement. It was agreed that it was not necessary to hear oral evidence from Mr Monioro on this point. The tribunal concluded hearing the evidence and submissions at 1.50pm.

21. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charge demands

23. The lease provides that the accounting period is from 29 September to 28 September the following year (see clause 1.1 of the lease). The lease requires service charges to be paid in advance by instalments on 29 September and 25 March each year (see paragraph (1) of the 5th Schedule of the lease). It was accepted by Mr Galway-Cooper that demands can be served by ordinary post at the demised premises (see clause 10 of the lease).

24. The Applicant relied upon the following demands:

    (1) in respect of the service charge year 2009/2010, the Applicant relied upon the demand dated 14/03/2012. This demand stated that the sum of £1,580.26 was due for this year and the Applicant's position was that this demand complied with section 20B of the Landlord and Tenant Act 1985 as it was served within 18 months of the costs being incurred.

    (2) in respect of the service charge year 2010/2011, the Applicant relied upon the demand dated 15/11/2012 that referred to interim demands served on 29/09/2010 for £768.50 and on 25/03/2011 for £768.50.

    (3) in respect of the service charge year 2011/2012, the Applicant also relied upon the demand dated 14/03/2012, which referred to interim demands on 29/09/2011 for £545.00 and on 25/03/2012 for £545.00.

25. Mr Darkwah told the tribunal in his oral evidence that Salter Rex had been appointed by the Applicant as managing agents. He initially stated that the agreement had been verbal and commenced in March 2008. He later changed his evidence having obtained a copy of the written agreement dated 09/03/2009 during the course of the hearing.

26. Mr Darkwah stated in his oral evidence that the above demands were issued by Salter Rex's Accounts Department and sent by first class post to the demised premises. His evidence was that interim demands were served twice per year and also demands for the year end. He said that the records were held in a database which had been updated just prior to the County Court proceedings being issued earlier this year. He said that copy demands produced from the database now automatically included the Respondent's home address, although the original demands were sent to the demised premises as that was what he had been instructed was the correct address for service. Mr Darkwah stated that the demands were sent by the Accounts Department, as they would have no reason not to. He said that debt

collectors, PDC, were later instructed to pursue the unpaid service charges and they first wrote to the Respondent on 07/12/2012.

27. The Respondent's position was that she had always made clear to the Applicant (and to those acting on its behalf) that correspondence should be sent to her home address as she was not occupying the demised premises, which she lets as a commercial landlord. The tribunal was told by the Applicant that she owns, either solely or jointly with her partner, 10 other properties and that she had ongoing disputes with the Applicant regarding other properties in addition to the property that is the subject matter of these proceedings. The Respondent made enquiries of Chatfield Property Ltd shortly after acquiring the leasehold interest in 2008, as they had been named as the Applicant's managing agents on the Sellers Information document. Chatfield responded on 12/12/2008 to the effect that they had never been involved in the management of the block.

28. The Respondent's evidence was that she had never heard of Salter Rex. In her evidence, the Respondent denied that Salter Rex had served demands at the demised premises and she was of the view that any documents should have been served at her home address since she had notified the Applicant that this was her address for service. The Respondent, however, acknowledged that the Applicant had at no point agreed to use the Respondent's home address for service and the lease had not been varied to that effect.

29. The Respondent's lettings agent, Mr Campbell, gave oral evidence to the tribunal. He had stated in his witness statement dated 18/10/2013 that the demands had been served at the demised premises. This was also stated in the Respondent's second witness statement dated 23/10/2013 and in her undated statement of case (see para. 16).

30. Mr Campbell informed the tribunal that he had acted as the Respondent's lettings agent for the past 5½ to 6 years. He stated that he had a key to the communal entrance door to the building and that he went to the building at least 2 to 3 times per week when he would sort through the mail, discarding anything that was obviously junk mail and forward any other correspondence to the Respondent. Mr Campbell stated that he had forwarded post to the Respondent about once or twice per month. Mr Campbell said he had done this throughout the time he had acted for the Respondent. He said that he had discussed the demands with the Respondent and thought that the amounts demanded were unreasonable.

31. The Respondent's Counsel submitted that the copy demands were insufficient evidence of the service of the demands.

The tribunal's decision

32. The tribunal decided that the demands referred to in paragraph 24 above were validly served in accordance with clause 10 of the lease.

Reasons for the tribunal's decision

33. The tribunal considered, on the balance of probabilities, that the demands had been served. The tribunal accepted the evidence of Mr Darkwah that the demands were issued and served by the Accounts Department of Salter Rex by first class post to the demised premises. There were a number of documents that would have been served during the course of a year, including interim demands and year end demands.

34. The tribunal found Mr Campbell's evidence to be credible, as he stated in his first witness statement that the demands had been sent to the demised premises and he stated in his oral evidence that he had forwarded all post, save for obvious junk mail, to the Respondent.

35. The Respondent also stated in her statement of case and first witness statement that the demands had been served at the demised premises. The Respondent's Counsel submitted that these document did not state what was actually meant but the tribunal considered the oral evidence of the witness and the documents more reliable evidence.

36. The Respondent wanted the Applicant to use her home address as she was not occupying the demised premises. The lease is a contract between the parties and, as such, it can only be varied by consent. The Applicant has not consented to varying the clause regarding service. Therefore, service is affected by sending demands to the demised premises by ordinary post in accordance with clause 10 of the lease. If the Respondent wanted other arrangements, then this should have been negotiated at the time the lease was drawn up. At the very least, the Respondent should have arranged for her post to be re-directed if she did not want to rely upon her own agent, Mr Campbell, to forward her post.

37. As the tribunal was satisfied that the demands were served, the tribunal went on to consider the reasonableness of the charges for each of the three service charges years at issue.

Service charge year 29/09/2009 to 28/09/2010

Building insurance £5,432.93 and terrorism cover £638.00

38. The Applicant produced the insurance certificate for the period 24/06/2009 to 23/06/2010 which was for a premium of £2,506.58 including terrorism cover. The insurance costs for the period 12/03/2009 to 24/06/2009 and for the period 24/06/2010 to 23/06/2011 had been included in this service charge year. The Applicant's position was that these costs had been incurred in the service charge year 2009/2010 and that the expense had been verified by the certified accounts that had been prepared.

39. The Respondent's position was that there was no evidence that the insurance premiums were paid. The Respondent submitted that there was only evidence that insurance was arranged and such insurance was not valid until the premium had been paid. The Respondent contended that the claim for insurance costs was, therefore, dishonest.

The tribunal's decision

40. The tribunal determines that the amount payable in respect of insurance including terrorism cover is £2,506.58. The Applicant's proportion is 20%, i.e. **£501.32**.

Reasons for the tribunal's decision

41. The Applicant is obligated to insure the building (see clause 6.3 of the lease) and a certificate of insurance has been produced. The insurance costs have been certified by an accountant.

42. The tribunal was satisfied, on the balance of the probabilities, that the insurance costs had been incurred. Further, the lease provides for payment in advance so the Applicant is not required to prove actual expenditure before any demand falls due (see paragraph 1.2 of the 5th Schedule).

43. The amount of the insurance was reduced to reflect the insurance cost for a period of 12 months. The tribunal considered this to be a reasonable amount for a building of this character and size. The tribunal did not accept that insurance costs for other years should be applied to this service charge year. Costs of insurance for other years should be applied to the particular year to which the insurance policy relates and proportioned accordingly so that the insurance cost demanded is for a 12 month period.

Electricity costs £191.60

44. This cost relates to the electricity supplied to 3 electric lights in the communal hallway. The Respondent disputed this item on the grounds that no evidence of the cost had been produced. There was

no other basis for her challenge and she did not produce any comparable evidence of alternative costs.

Tribunal's decision

45. The tribunal allowed the electricity costs of £191.60 in full. The Respondent's proportion is 20%, i.e. **£38.32**.

Reasons for the tribunal's decision

46. The Applicant was unaware of the Respondent's challenge until after the hearing commenced so the bills were not included in the Applicant's bundle. The tribunal accepted that the expense had been incurred as certified accounts had been produced that included this items. The tribunal considered that the costs were reasonable given the number of lights in the communal hallway.

Accountancy fees £170.00

47. The Respondent's objection to this item was on the same basis as the electricity costs.

Tribunal's decision

48. The tribunal allowed the accountancy fees of £170.00 in full. The Respondent's proportion is 20%, i.e. **£34.00**.

Reasons for tribunal's decision

49. The tribunal refers to its decision relating to electricity costs. This sum was allowed in full on the same basis.

Managing agents fees £1,458.75

50. Mr Darkwah's evidence regarding the appointment of the Applicant's managing agents, Salter Rex, is set out at paragraphs 25 to 26 above. Mr Darkwah attended the hearing on 29/10/2013 and again on 15/11/2013 without the main property file. He told the tribunal that Salter Rex manages about 30 properties for the Applicant. Mr Darkwah originally told the tribunal that he had been the property manager of the Respondent's property premises since about 2010. He said that he had visited the property about six times since his appointment. Mr Darkwah did not, however, keep a written record of all his visits and the Applicant produced only one written report of an external inspection undertaken in September 2011. Mr Darkwah had never been inside the building as he did not have a key. He said he was only able to look through the letter box. In his later evidence, Mr

Darkwah said that he had only been appointed during the 2011/2012 service charge year. Mr Darkwah stated that the insurance was arranged by the Applicant. The role of the managing agent he said was to issue demands, arrange budgets/accounts and deal with correspondence.

51. The Respondent's position regarding the managing agents appointed by the Applicant, Salter Rex, is set out at paragraph 28. The Respondent's contention is that the managing agents have done nothing so she has had to arrange works herself. Only in the closing submissions did the Respondent's Counsel suggest that there had been a failure to consult the lessees at the time of Salter Rex's appointment in breach of section 20 of the Landlord and Tenant Act 1985. Mr Galway-Cooper explained that he had been unable to cross-examine Mr Darkwah on this point as the written agreement of 09/03/2009 had only been seen when it was faxed to the tribunal after Mr Darkwah had given evidence. The Applicant's position was that, if there had been any failure to consult, this would only limit the costs to £250.00, which was the managing agent's charge for each flat in any event.

Tribunal's decision

52. The tribunal reduced the managing agent's fees to £500. The Respondent's proportion is 20%, i.e. **£100.00.**

Reasons for the tribunal's decision

53. The agreement between the managing agent and the Applicant states that it is for a period of 24 months and ongoing. The tribunal was aware at the time Mr Darkwah gave his evidence that this agreement was, therefore, a Qualifying Long Term Agreement *("LTQA")* as defined by section 20ZA(2) of the 1985 Act. The tribunal did not raise this issue of its own volition was in light of recent Upper Tribunal decisions that discourage the tribunal raising issues not raised by the parties.

54. The agreement is clearly a LTQA and there was no consultation in accordance with section 20 of the 1985 Act. Therefore, the costs are limited to £100 per flat, as per the statutory limit that applies where there has been a failure to consult.

55. In the alternative, if for any reason the tribunal was wrong to make the above determination, the tribunal would limit the management fee to £500.00 in any event. The tribunal considered the fee of £250.00 per flat excessive in light of the level of service provided. In particular, the tribunal considered the charge unreasonable given that the managing agent: had no key to the building and made no real attempt

to obtain one; only looked at the exterior and through the letter box; only recorded the outcome of an inspection on one occasion; did not arrange insurance; and only dealt with demands and correspondence. The tribunal was also concerned about the unsatisfactory evidence given by Mr Darkwah. He attended both hearings without the property file, he was confused about the commencement date of the agreement and whether or not it was in writing and he gave conflicting evidence as to when he had been appointed.

56. The tribunal decided that overall the managing agents had a very limited role and, therefore, the charge was excessive. Given their limited role, the tribunal considered that a fee of £100.00 per flat was reasonable.

Service charge year 29/09/2010 to 28/09/2011

Building insurance £1,948.43 and terrorism cover £251.59

57. The position of the parties in respect of this item was the same as for the previous year 2009/2010.

Tribunal's decision

58. The tribunal allowed the total sum of £2,200.02 in full. The Respondent's proportion is 20%, i.e. **£440.04**.

Reasons for the tribunal's decision

59. The tribunal refers to its reasons at paragraphs 41 to 43 above that also apply to this item. Further it was noted that the insurance cost in relation to this year was also lower than in the previous year.

Electricity £114.98

60. The position of the parties in respect of this item was the same as for the previous year.

Tribunal's decision

61. The tribunal allowed the sum of £114.98. The Respondent's proportion is 20%, i.e. **£23.00**.

Reasons for the tribunal's decision

62. The tribunal refers to its reasons at paragraph 46 above that also apply to this item.

Accountancy fees £180.00

63. The position of the parties in respect of this item was the same as for the previous year.

Tribunal's decision

64. The tribunal allowed the sum of £180.00. The Respondent's proportion is 20%, i.e. **£36.00**.

Reasons for the tribunal's decision

65. The tribunal refers to its reasons at paragraph 49 above that also apply to this item.

Management fee £1,500.00

66. The position of the parties in respect of this item was the same as for the previous year.

Tribunal's decision

67. The tribunal allowed the sum of £500.00. The Respondent's proportion is 20%, i.e. **£100.00**.

Reasons for the tribunal's decision

68. The tribunal refers to its reasons at paragraphs 53 to 56 above that also apply to this item.

Service charge year 29/09/2011 to 28/09/2012

Building insurance (including terrorism) £1,900.61

69. The position of the parties in respect of this item was the same as for the year 2009/10.

Tribunal's decision

70. The tribunal allowed the sum of £1,900.61. The Respondent's proportion is 20%, i.e. **£380.12**

Reasons for the tribunal's decision

71. The tribunal refers to its reasons at paragraphs 41 to 43 above that also apply to this item.

Electricity costs £164.73

72. The position of the parties in respect of this item was the same as for the year 2009/10.

Tribunal's decision

73. The tribunal allowed the sum of £164.73. The Respondent's proportion is 20%, i.e. **£32.95**.

Reasons for the tribunal's decision

74. The tribunal refers to its reasons at paragraph 46 above that also apply to this item.

Accountancy fees £190.00

75. The position of the parties in respect of this item was the same as for the year 2009/10.

Tribunal's decision

76. The tribunal allowed the sum of £190.00. The Respondent's proportion is 20%, i.e. **£38.00**.

Reasons for the tribunal's decision

77. The tribunal refers to its reasons at paragraph 49 above that also apply to this item.

Management fee £1,500.00

78. The position of the parties in respect of this item was the same as for the year 2009/10.

Tribunal's decision

79. The tribunal allowed the sum of £500.00. The Respondent's proportion is 20%, i.e. **£100.00**.

Reasons for the tribunal's decision

80. The tribunal refers to its reasons at paragraphs 53 to 56 above that also apply to this item.

Administration charges £60.00

81. The tribunal heard that the Applicant's managing agents instructed debt collectors, PDC, to pursue the service charges. PDC wrote to the Respondent at both the demised premises and her home address on 07/12/2012 and 14/12/2012 respectively. When the charges remained outstanding, solicitors were instructed. A charge of £60.00 (including VAT) was levied in respect of this work and an invoice confirmed the costs. The Applicant relied upon clauses 6.4.2 and 6.5 of the lease. The Respondent's Counsel was invited to comment but he made no observations at all. The Applicant's position was that the other charge of £150.00 was in respect of legal costs and a matter for the County Court to determine.

Tribunal's decision

82. The administration charge of **£60.00** is payable in full.

Reasons for the tribunal's decision

83. The lease permits such a charge and no objections were made. The tribunal considered that the sum was reasonable in the context of the work undertaken.

Application under s.20C and refund of fees

84. At the end of the hearing, the Applicant made an application for a refund of the fees that it had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund the fees paid by the Applicant within 28 days of the date of this decision.

85. In her statement of case, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal decided that it is just and equitable in the circumstances not to make an order under section 20C of the 1985 Act. The Applicant had pursued the service charges through debt recovery agents, which was unsuccessful so that County Court proceedings had to be brought.

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

The Respondent's position was that she was not liable to pay anything or she claimed a set off in respect of any costs. The tribunal made clear at the outset that it could not consider the counterclaim. The Respondent did not comply with directions. She also sought repeatedly to introduce matters that were not within the tribunal's remit. The tribunal decided in the Applicant's favour on the main issue, that is that the service charges are payable.

Application for costs

86. The Applicant also made an application for costs under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 that applies where a party has acted *frivolously, vexatiously, disruptively, or otherwise unreasonably* in connection with the proceedings. The Applicant's position was that the second day of the hearing would have been avoided had the Respondent complied with directions.

Tribunal's decision and reasons

87. The tribunal declined to make an order. Following the submission of medical evidence to the tribunal, it acknowledged that the Respondent and her child have health problems. The tribunal therefore permitted the Respondent to rely on a bundle of documents that was only received by the tribunal and the Applicant's Counsel on the day of the hearing. This evidence largely related to the counterclaim and other issues completely outside the tribunal's remit. There appeared to be a refusal or failure by the Respondent to understand the tribunal's jurisdiction. The Respondent has been represented throughout by solicitors but the Respondent's solicitors did not appear to grasp the position either.

88. As will be seen from this decision, much of the tribunal's time was taken up with procedural points. The substantive issues to be determined by the tribunal were relatively narrow – the service of demands and service charges for 3 years and each year only amounting to four items.

89. The tribunal considered that the Respondent's solicitors did not conduct the proceedings appropriately. They did not make contact with the tribunal about their client's difficulties and produced documents outside the tribunal's directions (as detailed earlier in this decision). Given their conduct, the tribunal considered that it was the Respondent's solicitors who had acted unreasonably. The Respondent's Counsel apologised to the tribunal for their 'lack of competence'. The tribunal regretted that it had no jurisdiction to award wasted costs against the Respondent's solicitors but it did not consider it appropriate to make an order against the Respondent.

The next steps

90. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Croydon County Court.

Name:	**Date:**
Miss J E Guest	25/11/2013

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

  and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
   (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
   (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
   (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
   (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
   (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
   (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
   (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
   (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
   (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
   (a) specified in his lease, nor
   (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
   (a) has been agreed or admitted by the tenant,
   (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
   (c) has been the subject of determination by a court, or
   (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
   (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).